

REMARKS

This Application has been carefully reviewed in light of the Final Action dated August 13, 2004. In order to advance prosecution of the present Application, Claims 1 and 22 Have been amended. Applicant respectfully requests reconsideration and favorable action for this Application.

Claims 1-3, 5, and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel, et al. in view of Caccavale, et al. Independent Claims 1 and 22 recite in general predicted responsiveness indicators being operative to predict a response time of each of the plurality of servers based at least in part on response time data and aging of the response time data gathered at the system in the course of monitoring connections established between the plurality of servers and clients on the external network. By contrast, the Examiner readily admits that the Brendel, et al. patent fails to disclose the use of predicted responsiveness indicators to predict server response time. To support the claimed predicted responsiveness indicators and prediction of server response time, the Examiner cites the Caccavale, et al. patent in combination with the Brendel, et al. patent. However, the Caccavale, et al. patent merely discloses sending out probes and identifying the length of time it takes a server to respond to the probe. The Caccavale, et al. patent does not disclose the use of any aging factor associated with its measured server length of response time. Thus, the Caccavale, et al. patent does not take into account an aging factor of response time data as provided by the claimed invention. Support for the above recitation can be found at page 27, line 24, to page 28, line 8, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 1-3, 5,

and 22 are patentably distinct from the proposed Brendel, et al. - Caccavale, et al. combination.

The present Response to Examiner's Final Action is necessary to address the Examiner's interpretation of the cited art. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now provided the instant interpretation of the cited art.

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CONCLUSION

Applicant has now made an earnest attempt to place the Application in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of Claims 1-3, 5, and 22.

The Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read "Charles S. Fish", is written over the printed name.

Charles S. Fish

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